IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 554 OF 2007

Ratna V. Karmokar .....Petitioner.

V/s

Slum Rehabilitation Authority
and Ors. .....Respondents.

Mr. Shashipal Shankar for the Petitioner.

Mr. G.D. Utangale for Respondent No.1.

Mr. N.A. Shaikh for Respondent No.2 (BMC).

Mr. Kishore Pandey for Respondent No.4.

ALONGW WITH
WRIT PETITION NO.555 OF 2007

Dropadi Shivsagar Singh .....Petitioner.

V/s

Slum Rehabilitation Authority
and Ors. .....Respondents.

Mr. Shashipal Shankar for the Petitioner.

Mr. G.D. Utangale for Respondent No.1.

Mr. N.A. Shaikh for Respondent No.2 (BMC).

Mr. Kishore Pandey for Respondent No.4.

CORAM: V.M. KANADE, J.

DATE : 12th April 2007

P.C.

1. Rule

2. Rule is made returnable forthwith by consent of the parties. Respondents waive service.

3. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the Respondents.

4. Petitioners in both these Petitions challenge the order passed by the Slum Rehabilitation Authority (For short "SRA") dated 12/11/2003. By the said order, SRA has held that the Petitioners are not eligible and their names should not be included in Appendix-2.

5. It is the case of both the Petitioners that they were residing in the said premises prior to 01/01/1995 and that they had sufficient documentary evidence proving this fact. Since their names were not included in the said list of

persons who were eligible for being accommodated in redevelopment scheme, they preferred an appeal under section 35 of the Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act, 1971 (For short “the said Act”) A direction was given by the said authority to the Assistant Commissioner, who is a competent authority under section 3 of the said Act to make an inquiry and submit a report to SRA. Accordingly, the Assistant Commissioner held an inquiry and came to the conclusion that names of both these Petitioners should be included in Appendix-2. Thereafter, the matter was again heard by SRA.

6. The grievance of the learned Counsel appearing on behalf of the Petitioners is that the SRA has not taken into consideration the report of the Assistant Commissioner. It is submitted that SRA was under an obligation to consider the report of the Assistant Commissioner and thereafter decide whether the report should be accepted or rejected. He has invited my attention to the impugned order and has submitted that nowhere in the said order any reference has been made to the said report which is submitted by the

Assistant Commissioner.

7. The learned Counsel appearing on behalf of Respondent No.1 submitted that in the case of Ratna Karmokar, the SRA has observed that she was not residing in the said area prior to the datum line on the basis of evidence which was adduced before him and has further submitted that in the case of Shivsagar Singh it was established that he was having a shop on the ground floor of the said premises and the person who was the owner of the said structure viz. Shri Vasant K. Udyavarkar was held to be eligible. He submitted that SRA has, by a reasoned order, dismissed the appeal filed by the Petitioners and, therefore, there was no reason to interfere with the said order.

8. I am of the view that the SRA has clearly committed an error of law which is apparent on the face of record in completely ignoring the report which is submitted by the Assistant Commissioner. Under section 3 of the said Act the Municipal Commissioner is a competent authority to hold an inquiry for the purpose of determining the eligibility of

persons who are claiming to be the lawful occupants of the said premises. SRA, therefore, was under a statutory obligation to consider the said report and, thereafter, record a finding whether the said report was acceptable or not. From the impugned order, it can be seen that no reference has been made by SRA to the report which is submitted by the Assistant Commissioner. Under the circumstances, the impugned order will have to be set aside.

9. Accordingly, the impugned order is set aside. SRA is directed to decide the appeal afresh after taking into consideration the report which is submitted by the Assistant Commissioner in accordance with law. SRA to decide this appeal as expeditiously as possible and, in any case, within a period of two months. Parties shall appear before SRA on 25/4/2007. Rule is made absolute in the above terms.

(V.M. KANADE, J.)